

OPPORTUNITIES NOW ENTERPRISES (ONE) INC.

8303 Clairemont Mesa Blvd., Suite 201
San Diego, California 92111
Tel 619-576-9331 Fax 576-6309

April 15, 1996

William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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**Re: Comments on Proposed Rulemaking on Rules For
Auctioning the Remaining Broadband PCS Licenses
(WT DOCKET 96-59, GN DOCKET 90-314)**

Dear Mr. Caton:

We wish to comment on the FCC Notice of Proposed Rulemaking. Our main points are:

- the threshold definition of small business should be \$11 million and a new category with increased bidding credits of 40% should be created of very small with a \$5 million threshold;
- installment payment plans and other benefits should be available to designated entities (DEs) in the D and E blocks with the most favorable terms for very small;
- if the D, E & F block licenses are auctioned concurrently DEs should be able participate in each block with access to bidding credits;
- partitioning of licenses should be allowed if consummated with small DEs with partitioning rules adopted concurrent with the auction rules
- the attribution rules of the Sixth Report & Order should be rescinded and the attribution rules articulated in the Fifth Report & Order should be reinstated; and
- the rule on limitations on licenses #24.710 should be changed to 25 million population (pops)

We recommend a tiered definition of the size standard for small businesses: **very small** for firms with average annual gross sales of \$5 million; **and small** of firms with average annual gross sales of \$11 million. Our recommendations on a new **very small** size standard is race and gender neutral yet inclusive of most women and minority owned firms. In light of available information that 99% of women as well as minority owned firms are \$1 million or smaller, coupled with the incomplete record developed by the

FCC to pass the strict scrutiny standard of judicial review, this **very small** size standard would be responsive to the U.S. Congress' directive to the FCC expressed in Section 309(j)(3)(B). The basis for the size standards for small businesses flow from the Small Business Administration (SBA). The SBA size standards for businesses in telecommunications include:

- **radiotelephone communications, industry (SIC Code) 4812 \$5 million**
- **services not elsewhere classified, e.g. PCS, (SIC Code) 4988 \$11 million**

It is imperative that the FCC adopt a size standard for the 10 MHz auctions much smaller than the \$40 million standard used in the 30 MHz licenses. Adoption of a tiered size standard of **\$5 million for very small and \$11 million for small** sends the message that the FCC is not turning its back on minorities and women for the sake of race and gender neutrality. By the same token, the FCC would fulfill the intent of Congress, and Chairman Reed Hundt's stated policy on finding creative solutions to insure minority opportunity. **The U. S. Congress directed the FCC to remedy the serious imbalance in the participation by certain groups, especially minorities and women.** Congress' objectives are set forth in Section 309(j)(3)(B), of promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by **disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women.**

Past methods used by the FCC to allocate licenses have not opened doors for meaningful participation by small businesses including businesses owned by minorities and women. FCC Chairman Reed E. Hundt testified before the House Minority Enterprise Subcommittee on May 20, 1994, and stated, "...in light of this serious underrepresentation, there remains 'a fundamental obligation for both Congress and the FCC to examine new and creative ways to insure minority opportunity.'"¹ The FCC has stated that, "The record indicates that, in the absence of meaningful efforts to assist designated entities, there would be good reason to think that participation by these groups, particularly businesses owned by women and minorities, would continue to be severely limited."²

At the FCC En Banc hearing on spectrum policy held March 5, 1996, I testified that the radio spectrum is one of the most valuable public assets in the nation and the FCC should insure full participation of small businesses and companies owned by women and members of minority groups. **Participation by businesses owned by minorities and women are severely limited even in the "entrepreneurs" auction designed to maximize their participation.** The FCC was alerted to this likely outcome before the final rules were adopted. Numerous entities filed petitions imploring the FCC to use a **small** size standard such as \$5 million. They included the National Council of La Raza,

1. Testimony of Reed E. Hundt, Chairman, Federal Communications Commission, before the House Minority Enterprise Subcommittee, May 20, 1994.

2. FCC's Fifth Report and Order, adopted June 29, 1994, #110, page 48

the League of United Latin Americans, the American Hispanic Owned Radio Association, CallCell, Inc., Columbia Cellular Inc., Integrated Voicsys, Ondas Communications Services Inc., and Opportunities Now Enterprises, (O.N.E.) Inc.. In addition, letters in support of a \$5 million size standard were submitted by the Chicano Federation of San Diego County, the Asian Business Association of San Diego County, the CDC Small Business finance Corporation, and San Diego Councilman Juan Vargas.

The FCC should require that an entity be in existence at least 6 months before the start of the broadband auctions.

The FCC rules on attribution from the Sixth Report & Order should be rescinded and the rules from the Fifth Report & Order should be reinstated to eliminate abuses and retain the integrity of the intent of Congress and create **meaningful** opportunity for **very small and small business entities**.

The results of the C block auction are the most current statistical evidence showing limited access for minorities to public assets controlled by the FCC.

To increase the opportunities for minorities and women as well as disseminating licenses among a wide variety of applicants, the FCC should allow PCS licensees to partition their licenses. An interest has been expressed by some winners of licenses to partition their licenses. The public interest would be served if PCS spectrum partitioning is allowed under limited conditions. If partitioning was limited to **very small and small** firms under \$11 million, an additional race and gender neutral solution would exist to address the need of promoting economic opportunity and competition for minorities, women and other diverse entities as well widely disseminating valuable public assets.

Sincerely yours,

A handwritten signature in black ink that reads "Mateo R. Camarillo". The signature is fluid and cursive, with the first name "Mateo" being more prominent.

Mateo R. Camarillo
President

Enclosure: Standard Industrial Classification Manual, 1987, pp 282-283.

Major Group 48.—COMMUNICATIONS

The Major Group as a Whole

This major group includes establishments furnishing point-to-point communications services, whether intended to be received aurally or visually; and radio and television broadcasting. This major group also includes establishments primarily engaged in providing paging and beeper services and those engaged in leasing telephone lines or other methods of telephone transmission, such as optical fiber lines and microwave or satellite facilities, and reselling the use of such methods to others. Establishments primarily engaged in furnishing telephone answering services are classified in Services, Industry 7389.

Industry
Group
No. Industry
No.

481 TELEPHONE COMMUNICATIONS

4812 Radiotelephone Communications

Establishments primarily engaged in providing two-way radiotelephone communications services, such as cellular telephone services. This industry also includes establishments primarily engaged in providing telephone paging and beeper services and those engaged in leasing telephone lines or other methods of telephone transmission, such as optical fiber lines and microwave or satellite facilities, and and reselling the use of such methods to others. Establishments primarily engaged in furnishing telephone answering services are classified in Services, Industry 7389.

Beeper (radio pager) communications services
Cellular telephone services

Paging services: radiotelephone
Radiotelephone communications

4813 Telephone Communications, Except Radiotelephone

Establishments primarily engaged in furnishing telephone voice and data communications, except radiotelephone and telephone answering services. This industry also includes establishments primarily engaged in leasing telephone lines or other methods of telephone transmission, such as optical fiber lines and microwave or satellite facilities, and reselling the use of such methods to others. Establishments primarily engaged in furnishing radiotelephone communications are classified in Industry 4812, and those furnishing telephone answering services are classified in Services, Industry 7389.

Data telephone communications
Local telephone communications, except radio telephone
Long distance telephone communications

Voice telephone communications, except radio telephone

482 TELEGRAPH AND OTHER MESSAGE COMMUNICATIONS

4822 Telegraph and Other Message Communications

Establishments primarily engaged in furnishing telegraph and other nonvoal message communications services, such as cablegram, electronic mail, and facsimile transmission services.

Cablegram services
Electronic mail services
Facsimile transmission services
Mailgram services
Photograph transmission services
Radio telegraph services

Telegram services
Telegraph cable services
Telegraph services
Teletypewriter services
Telex services

Industry
Group
No. Industry
No.

RADIO AND TELEVISION BROADCASTING STATIONS

4832 Radio Broadcasting Stations

Establishments primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Also included here are establishments primarily engaged in radio broadcasting and which produce radio program materials. Separate establishments primarily engaged in producing radio program materials are classified in Services, Industry 7922.

Radio broadcasting stations

4833 Television Broadcasting Stations

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified in Services, Industry 7812. Establishments primarily engaged in furnishing cable and other pay television services are classified in Industry 4841.

Television broadcasting stations

484

CABLE AND OTHER PAY TELEVISION SERVICES

4841 Cable and Other Pay Television Services

Establishments primarily engaged in the dissemination of visual and textual television programs, on a subscription or fee basis. Included in this industry are establishments which are primarily engaged in cablecasting and which also produce taped program materials. Separate establishments primarily engaged in producing taped television or motion picture program materials are classified in Services, Industry 7812.

Cable television services
Closed circuit television services
Direct broadcast satellite (DBS) services
Multipoint distribution systems (MDS) services

Satellite master antenna systems (SMATV) services
Subscription television services

489

COMMUNICATIONS SERVICES, NOT ELSEWHERE CLASSIFIED

4899 Communications Services, Not Elsewhere Classified

Establishments primarily engaged in furnishing communications services, not elsewhere classified. Establishments primarily engaged in providing online information retrieval services on a contract or fee basis are classified in Services, Industry 7375.

Radar station operation
Radio broadcasting operated by cable companies
Satellite earth stations

Satellite or missile tracking stations, operated on a contract basis
Tracking missiles by telemetry and photography on a contract basis